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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,006	10/17/2003	Russell T. White JR.	END920030046US1	4391
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HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FL ALBANY, NY 12207			EXAMINER LEVINE, ADAM L	
			ART UNIT 3625	PAPER NUMBER

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/688,006

Applicant(s)

WHITE, RUSSELL T.

Examiner

Adam Levine

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 17 October 2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. **Claims 6,7,10,16, and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims are directed to variations of "maintaining the frequency" of purchase of items. Nowhere in the application does the applicant describe how this is done. Please note: In order to proceed with a thorough examination, the Examiner has continued under the assumption that applicant intended to describe the storing of information regarding the frequency of purchase of items.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**2. Claims 1,2,8,9,13,14, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 1 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the steps between storing and locating the items and the identifying of at least one high frequency item. These steps would describe how an item would become a high frequency item.

Claims 14 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the elements between the elements storing and locating the items and the element identifying at least one high frequency item. These elements would enable an item to become a high frequency item.

Claims 1,9,13,14, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims describe "automatically generating" a query. It is indeterminable whether this refers to recalling a stored query, or creating a new query. The word "generate" is used to mean "create" in the

Art Unit: 3625

specification with regard to the generation/creation of webpages, however, the specification is not enabling for automatically "creating" a new query.

Claims 2 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims describe "selecting at least one high frequency item." It is not determinable from the claims how this selecting takes place. For example, if the selecting is performed by a human user or administrator, then the method step should be "receiving a selection from...."

Claim 13 recites the limitation "the automatically generating step." There is insufficient antecedent basis for this limitation in the claim. Claim 13 depends from Claim 11, Claim 11 depends from Claim 8. The "automatically generating" step is introduced in Claim 9.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**3. Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Spiegel (US Patent No. 6,466,918).**

Spiegel teaches all the limitations of Claims 1-22. For example Spiegel discloses a method for storing items in a hierarchical structure, allowing users to select items

Art Unit: 3625

within that structure, identifying frequently purchased items, and elevating them for display on a higher level in the structure than that on which they would normally appear (see at least Abstract, Figs. 1A-4, column 1 lines 5-15). Spiegel further discloses:

- storing items in a hierarchical structure: wherein each of the items is located using a query for each level of the hierarchical structure (see at least Abstract, Figs. 1A-8, column 1 lines 25-59).
- identifying at least one high frequency item: (see at least Abstract, Fig. 3, column 1 lines 7-13, column 1 line 60 – column 2 line 36, column 6 lines 5-20); maintaining the frequency that each of the items has been purchased (see at least Abstract, column 2 lines 12-24, column 3 lines 13-29, column 6 lines 5-20, 30-39. Please note: this element is interpreted as referring to the storage of information regarding the frequency of purchase of each item. See the above 112(1) rejection of Claims 6, 7, 10, 16, and 21); separate frequency maintained for each of a plurality of groups of users (see at least column 7 line 59-column 8 line 7, column 9 line 64 – column 10 line 16. Please note: this element is interpreted as referring to the storage of information regarding the frequency of purchase of each item. See the above 112(1) rejection of Claims 6, 7, 10, 16, and 21).
- automatically generating the query for each level of the hierarchical structure: to display the at least one high frequency item on a high level page (see at least Abstract, Figs. 1A, 2-4, 11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20).

- presenting the item to an administrator: selecting at least one high frequency item for display on the high level page (see at least Abstract, Figs. 1A,2-4,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20).
- storing the operations performed by a user to select an item in the hierarchical structure: analyzing the stored operations, obtaining the query for each level based on the stored operations (see at least Abstract, Figs. 1A,2-4,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20. Please note: it is inherent in the method of Spiegel that in order to display any selected item the operations performed to select the item must be stored and analyzed).
- an identification system for identifying a user: (see at least column 2 line 46 – column 3 line 12, column 6 line 40 – column 7 line 5, column 11 lines 34-50, column 12 line 61 – column 13 line 7).

*Pertaining to system and computer program product Claims 14-18 and 19-22*

Rejection of Claims 14-18 and 19-22 is based on the same rationale as noted above.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Ortega, US Patent No. 6,489,968 (December 3, 2002). Teaches determination of popular items within a hierarchical browse structure and the elevation of the popular item for display at a higher level of the browse tree than that on which it

Art Unit: 3625

would normally appear. Also teaches elevation based on predicted interest to particular user.

- Ortega, US Patent No. 6,564,213 (May 13, 2003). Teaches the recall of popular queries and the autocompletion of queries as they are entered, based on the popularity of the query determined by previous use of the same query.
- Ortega, US Pub. No. 2002/0050916 (March 13, 2003). Teaches determination of popular items within a hierarchical browse structure and the elevation of the popular item for display at a higher level of the browse tree than that on which it would normally appear. Also teaches elevation based on predicted interest to particular user.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Levine whose telephone number is 571.272.8122. The examiner can normally be reached on M-F, 8:30-5:00 Eastern.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on 571.272.7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Adam Levine  
Patent Examiner  
November 4, 2005

  
WYNN W. COGGINS  
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TECHNOLOGY CENTER 3600